

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

ALBERT L. GRAY, Administrator, <i>et al</i>	:	
Plaintiffs,	:	
	:	
v.	:	C.A. No. 04-312-L
	:	
JEFFREY DERDERIAN, <i>et al</i>	:	
Defendants.	:	

**ANSWER OF DEFENDANT, AMERICAN FOAM CORPORATION,
TO PLAINTIFFS' FIRST AMENDED MASTER COMPLAINT**

Now comes Defendant, *American Foam Corporation*, and hereby provides answer
to Plaintiffs' First Amended Master Complaint as follows:

PARTIES

Plaintiffs

1-240. Defendant is without knowledge or information sufficient to form a belief as
to the truth of the allegations set forth in Paragraphs 1-240 of Plaintiffs' First Amended
Master Complaint, and, therefore, leaves Plaintiffs to their proof.

GENERAL ALLEGATIONS AS TO ALL DEFENDANTS

271. Defendant denies the allegations set forth in Paragraph 271 of Plaintiffs' First
Amended Master Complaint.

JEFFREY DERDERIAN

272. Defendant restates its responses to all prior paragraphs of Plaintiffs' First
Amended Master Complaint as if fully set forth herein.

319

273-279. As to Paragraphs 273-279 of Plaintiffs' First Amended Master Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein, and, therefore, denies same.

COUNTS I-XXXIX and COUNTS XLII-XLVII and COUNTS LI-LXXXI

As to Paragraphs 280, 282, 287, 289, 294, 296, 300, 302, 308, 310, 316, 318, 324, 326, 332, 340, 342, 348, 350, 356, 358, 364, 366, 372, 374, 385, 393, 403, 409, 426, 428, 430, 432, 437, 439, 445, 451, 457, 473, 478, 485, 490, 507, 512, 533, 536, 540, 561, 564, 568, 589, 592, 597, 618, 621, 623, 626, 629, 632, 644, 649, 652, 660, 662, 664, 676, 678, 684, 686, 692, 694, 696 and 702 of Plaintiffs' First Amended Master Complaint, Defendant restates its responses to all prior paragraphs of Plaintiffs' First Amended Master Complaint as if fully set forth herein.

As to Paragraphs 281, 283-286, 288, 290-293, 295, 297-299, 301, 303-307, 309, 311-315, 317, 319-323, 325, 327-331, 333-339, 341, 343-347, 349, 351-355, 357, 359-363, 365, 367-371, 373, 375-384, 386-392, 394-402, 404-408, 410-425, 427, 429, 431, 433-436, 438, 440-444, 446-450, 452-456, 458, 469-472, 474-477, 479-484, 486-489, 491, 492, 508-511, 513-532, 534, 535, 537-539, 541-560, 562, 563, 565-567, 569-588, 590, 591, 593-596, 598-617, 619, 620, 622, 624, 625, 627, 628, 630, 631, 633-643, 645-648, 650, 651, 653-659, 661, 663, 665-675, 677, 679-683, 685, 687, 688-691, 693, 695, 697-701 and 703-706 of Plaintiffs' First Amended Master Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein, and, therefore, denies same.

COUNT XXXIX

Barry H. Warner

459. Defendant admits the allegations set forth in Paragraph 459, Count XXXIX, of Plaintiffs' First Amended Master Complaint.

460. Defendant admits the allegations set forth in Paragraph 460, Count XXXIX, of Plaintiffs' First Amended Master Complaint.

461. Defendant denies the allegations set forth in Paragraph 461, Count XXXIX, of Plaintiffs' First Amended Master Complaint.

462. Defendant denies the allegations set forth in Paragraph 462, Count XXXIX, of Plaintiffs' First Amended Master Complaint.

463. Defendant denies the allegations set forth in Paragraph 463, Count XXXIX, of Plaintiffs' First Amended Master Complaint.

464. Defendant denies the allegations set forth in Paragraph 464, Count XXXIX, of Plaintiffs' First Amended Master Complaint.

COUNT XL

Barry H. Warner - Negligence

465. Defendant restates its responses to all prior paragraphs of Plaintiffs' First Amended Master Complaint as if fully set forth herein.

466. Defendant denies the allegations set forth in Paragraph 466, Count XL, of Plaintiffs' First Amended Master Complaint.

COUNT XLI

Violation of Rhode Island General Laws Title 9, Chapter 1, Section 2

467. Defendant restates its responses to all prior paragraphs of Plaintiffs' First Amended Master Complaint as if fully set forth herein.

468. Defendant denies the allegations set forth in Paragraph 468, Count XLI, of Plaintiffs' First Amended Master Complaint.

COUNT XLVIII

American Foam Corporation - Negligence

493. Defendant restates its responses to all prior paragraphs of Plaintiffs' First Amended Master Complaint as if fully set forth herein.

494. Defendant admits the allegations set forth in Paragraph 494, Count XLVIII, of Plaintiffs' First Amended Master Complaint.

495. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 495, Count XLVIII, of Plaintiffs' First Amended Master Complaint, and, therefore, denies same.

496. Defendant denies the allegations set forth in Paragraph 496, Count XLVIII, of Plaintiffs' First Amended Master Complaint.

497. Defendant denies the allegations set forth in Paragraph 497, Count XLVIII, of Plaintiffs' First Amended Master Complaint.

498. Defendant denies the allegations set forth in Paragraph 498, Count XLVIII, of Plaintiffs' First Amended Master Complaint.

COUNT XLIX

American Foam Corporation Strict Liability

499. Defendant restates its responses to all prior paragraphs of Plaintiffs' First Amended Master Complaint as if fully set forth herein.

500. Defendant denies the allegations set forth in Paragraph 500, Count XLIX, of Plaintiffs' First Amended Master Complaint.

501. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 501, Count XLIX, of Plaintiffs' First Amended Master Complaint, and, therefore, denies same.

502. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 502, Count XLIX, of Plaintiffs' First Amended Master Complaint, and, therefore, denies same.

503. Defendant denies the allegations set forth in Paragraph 503, Count XLIX, of Plaintiffs' First Amended Master Complaint.

COUNT L

American Foam Corporation - Breach of Warranty

504. Defendant restates its responses to all prior paragraphs of Plaintiffs' First Amended Master Complaint as if fully set forth herein.

505. Defendant denies the allegations set forth in Paragraph 505, Count L, of Plaintiffs' First Amended Master Complaint.

506. Defendant denies the allegations set forth in Paragraph 506, Count L, of Plaintiffs' First Amended Master Complaint.

WHEREFORE, Defendant, *American Foam Corporation*, demands judgment against Plaintiffs for costs.

FIRST AFFIRMATIVE DEFENSE

Defendant denies the applicability of the doctrine of strict liability in tort to this litigation.

SECOND AFFIRMATIVE DEFENSE

Defendant states that Plaintiffs' claims against Defendant are barred because damages or losses experienced, if any, were not due to any act or failure to act of this Defendant, but were caused solely by the acts of a third-party or parties for whose acts or failure to act this Defendant is not responsible.

THIRD AFFIRMATIVE DEFENSE

Defendant states that Plaintiffs were not in the exercise of due care, but rather the negligence of Plaintiffs contributed to or caused the injuries or damages complained of, and therefore, the recovery of Plaintiffs is barred in whole or in part, or is subject to diminution.

FOURTH AFFIRMATIVE DEFENSE

Defendant gave no warranties, express or implied, to Plaintiffs or to anyone acting of their behalf.

FIFTH AFFIRMATIVE DEFENSE

Defendant states that if there were express or implied warranties as alleged in the Complaint, which Defendant specifically denies, Plaintiffs were not within the scope of any

such alleged warranties and no sale to Plaintiffs ever occurred of any product sold or distributed by Defendant.

SIXTH AFFIRMATIVE DEFENSE

Defendant states that Plaintiffs' claims based on allegations of express or implied warranty are barred for the reason that no sale of goods occurred.

SEVENTH AFFIRMATIVE DEFENSE

Defendant states that if Defendant's agents or servants made any express warranties, which Defendant specifically denies, then the agents or servants of Defendant did so without authority, express or implied.

EIGHTH AFFIRMATIVE DEFENSE

Defendant states that if it was liable, negligent or in breach of any warranty, all of which it expressly denies, Defendant's liability in any or all of those events has been terminated by the intervening acts, omissions, or negligence of others for whose conduct Defendant is not legally responsible.

NINTH AFFIRMATIVE DEFENSE

Defendant states that the Complaint fails to state any claim upon which relief can be granted to the extent that it seeks punitive or exemplary damages, which are not recoverable under applicable law.

TENTH AFFIRMATIVE DEFENSE

Defendant states that an award of punitive damages against Defendant in this case would be unconstitutional and in violation of the due process and equal protection clauses of the Fourteenth Amendment of the Constitution of the United States.

ELEVENTH AFFIRMATIVE DEFENSE

Defendant states that if Defendant, its agents or servants made any express or implied warranties, which Defendant specifically denies, then Defendant denies that it breached any of the warranties.

TWELFTH AFFIRMATIVE DEFENSE

Defendant states that if Defendant, its agents or servants made any express warranties, allegations which Defendant specifically denies, then Plaintiffs did not rely on the express warranties and further, there was no such reliance by any person or entity authorized to represent Plaintiffs.

THIRTEENTH AFFIRMATIVE DEFENSE

Defendant states that Plaintiffs failed to give notice of the alleged breaches of warranties within a reasonable time.

FOURTEENTH AFFIRMATIVE DEFENSE

Defendant states that Plaintiffs were not a third-party beneficiary with reference to any alleged warranties, either express or implied, and, therefore, Plaintiffs cannot recover in this action.

FIFTEENTH AFFIRMATIVE DEFENSE

Defendant states that if Plaintiffs prove that Plaintiffs were injured as alleged, said injuries were caused by the intervening and/or superseding acts of third persons for whom this Defendant is not liable.

SIXTEENTH AFFIRMATIVE DEFENSE

Defendant pleads *General Laws of Rhode Island*, §9-1-32.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiffs did not rely upon the skill and judgment of Defendant in selecting the product referred to in the Complaint.

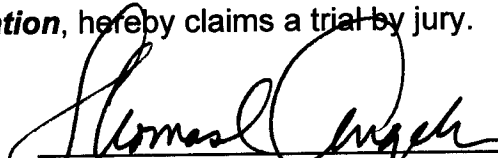
AMERICAN FOAM CORPORATION

By its Attorneys,


Thomas C. Angelone, Esq. #1373
HODOSH, SPINELLA & ANGELONE PC
One Turks Head Place, Suite 1050
Providence, Rhode Island 02903
(401) 274-0200
Fax (401) 274-7538

Dated: January 5, 2005

Defendant, **American Foam Corporation**, hereby claims a trial by jury.

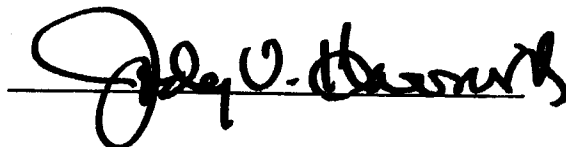

Thomas C. Angelone, Esq.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

CA 03-148L TAMMY PASSA, et al v. JEFFREY DERDERIAN, et al
CA 03-208L RONALD KINGSLEY, et al v. JEFFREY DERDERIAN, et al
CA 03-335L BARBARA GUINDON, et al v. AMERICAN FOAM CORP., et al
CA 03-483L CHAD M. HENAULT, et al v. AMERICAN FOAM CORP., et al
CA 04-26L LINDA RODERIGUES, et al v. AMERICAN FOAM CORP., et al
CA 04-56L CHARLES SWEET, et al v. AMERICAN FOAM CORP., et al
CA 04-312L ALBERT L. GRAY, et al v. JEFFREY DERDERIAN, et al

Certificate of Service

I hereby certify that an exact copy of the answer of Defendant, American Foam Corp., in each of the above-referenced cases was electronically mailed [from the email certification of the court] to the following individuals on this 12 day of February, 2005.



Charles Babcock, Esq.
Jackson Walker LLP
1401 McKinney, Suite 1900
Houston, TX 77010
Cbabcock@jw.com

C. Russell Bengtson, Esq.
Carroll, Kelly & Murphy
One Turks Head Place, Suite 400
Providence, RI 02903
rbengtson@ckmllaw.com
JBL Incorporated fka James B.
Lansing Sound, Incorporated dba
JBL Professional

Gregory L. Boyer, Esq.
170 Westminster Street
Suite 200
Providence, RI 02903
gboyerlaw1@aol.com
Gresham & Associates of RI, Inc.

Stephen E. Breggia, Esq.
Breggia, Bowen & Grande
395 Smith Street
Providence, RI 02908
sbreggia@bbglaw.us
Plaintiff

Joseph V. Cavanagh, Jr., Esq.
Blish & Cavanagh, LLP
30 Exchange Terrace
Providence, RI 02903
jvc@blishecavlaw.com
Anheuser-Busch, Inc.

Edward M. Crane, Esq.
Skadden, Arps, Slate,
Meagher & Flom
333 West Wacker Drive
Chicago, IL 60606
ecrane@skadden.com
Anheuser-Busch Companies, Inc.

Brian Cunha, Esq.
Brian Cunha & Associates
904 Broadway
East Providence, RI 02914
Brian@BrianCunha.com
Plaintiff

Anthony F. DeMarco, Esq.
Reynolds, DeMarco & Boland, Ltd.
170 Westminster Street, Suite 200
Providence, RI 02903
tdemarco@conversant.net
Jeffrey Derderian, Michael Derderian, Derco

Marc DeSisto, Esq.
Desisto Law
211 Angell Street
P.O. Box 2563
Providence, RI 02906-2563
marc@desistolaw.com
Dennis P. Larocque, Fire Inspector
for the Town of West Warwick,
Anthony Bettencourt in his capacity
as Police Officer for the Town
of West Warwick, Diane Deruosi,
in her capacity as Treasurer of
the Town of West Warwick

Curtis R. Diedrich, Esq.
Sloane & Walsh
Three Center Plaza
Boston, MA 02108
c.diedrich@sloanwalsh.com
Luna Tech, Inc.

Stefanie DiMaio Larivee, Esq.
215 Broadway
Providence, RI 02903
singinglawyer@msn.com

Mark P. Dolan, Esq.
Rice Dolan & Kershaw
170 Westminster Street, Suite 900
Providence, RI 02903
ricedolan@aol.com
Underwriters at Lloyds, London

Christopher C. Fallon, Jr., Esq.
Cozen O'Connor
1900 Market Street
Philadelphia, PA 19103-3508
cfallon@cozen.com

Stephen P. Fogerty, Esq.
Halloran & Sage, LLP
315 Post Road West
Westport, CT 06880
fogerty@halloran-sage.com
Gresham & Associates of RI, Inc.

Mark C. Hadden, Esq.
Law Offices of Mark C. Hadden
68 Kennedy Plaza, Suite 3
Providence, RI 02903
mhadden@mhaddenlaw.com
Essex Insurance Company

Edward T. Hinchey, Esq.
Sloan and Walsh, LLP
Three Center Plaza, 8th Floor
Boston, MA 02108
ehinchey@sloanwalsh.com
Luna Tech, Inc.

Stephen A. Izzi, Esq.
Holland & Knight, LLP
One Financial Plaza, Suite 1800
Providence, RI 02903-0819
stephen.izzi@hklaw.com
Property & Casualty Insurance
Association of America

Patrick T. Jones, Esq.
Cooley Manion Jones, LLP
21 Custom House Street
Boston, MA 02110
plones@cml-law.com

Howard J. Julian
570 Shermantown Road
Saunderstown, RI 02874
shohomes@yahoo.com

Ronald Langlois, Esq.
Smith & Brink, P.C.
One State Street, Suite 400
Providence, RI 02908
rlanglois@smithbrink.com
Barry H. Warner

Donna M. Lamontagne, Esq.
Zizik, Powers, O'Connell, Spaulding
& Lamontagne, P.C.
40 Westminster Street, Suite 201
Providence, RI 02903
diamontagne@zizikpowers.com

Faith A. LaSalle, Esq.
One Turks Head Place
Providence, RI 02903
flasalle@lallaslaw.com

James R. Lee, Esq.
State of Rhode Island
Department of Attorney General
150 South Main Street
Providence, RI 02903
jlee@riag.state.ri.us
State of Rhode Island, Irving J. Jones,
in his capacity as Fire Marshal for the
State of Rhode Island

Thomas W. Lyons, Esq.
Strauss, Factor, Laing & Lyons
222 Richmond Street, Suite 208
Providence, RI 02903-2914
thlyons@straussfactor.com

Richard W. MacAdams, Esq.
MacAdams & Weick, Inc.
101 Dyer Street, Suite 400
Providence, RI 02903
rmacadams@mandylaw.com
Brian Butler, Lin Television Corp.

W. Thomas McGough, Jr., Esq.
Reed Smith LLP
435 Sixth Avenue
Pittsburg, PA 15219
tmcgough@reedsmith.com
Clear Channel Broadcasting, Inc.

Edwin F. McPherson, Esq.
McPherson & Kalmansohn
1801 Century Park East, 24th Floor
Los Angeles, CA 90067
emcpherson@m-k-law.com
Jack Russell, Jack Russell Touring,
Inc., Paul Woolnough, Manic Music
Management, Inc., Knight Records, Inc.

John R. Mahoney, Esq.
Asquith & Mahoney, LLP
155 South Main Street, 2nd Floor
Providence, RI 02903
johnmahoney@amlawllp.com

Eva Marie Mancuso, Esq.
Hamel, Waxler, Allen & Collins
387 Atwells Avenue
Providence, RI 02909
emancuso@hwac.com

Mark S. Mandell, Esq.
Mandell, Schwartz & Boisclair
One Park Row
Providence, RI 02903
mmandell@man.com
Plaintiff

Jessica L. Margolis, Esq.
Debevoise & Plimpton
919 Third Avenue
New York, NY 10022
jmargolis@debevoise.com

Donald J. Maroney, Esq.
Kelly, Kelleher, Reilly & Simpson
146 Westminster Street, Suite 500
Providence, RI 02903
dmaroney@kkrs.com

Matthew F. Medeiros, Esq.
Little Medeiros Kinder Bulman & Whitney
72 Pine Street
Providence, RI 02903
mmf@lmbkw.com

Howard A. Merten, Esq.
Vetter & White
20 Washington Place
Providence, RI 02903
hmerden@vetterandwhite.com
McLaughlin & Moran, Inc.

Steven A. Minicucci, Esq.
Calvino Law Associates
373 Elmwood Avenue
Providence, RI 02907
sminicucci@calvinolaw.com

Ralph J. Monaco, Esq.
Conway & Londregan, PC
38 Huntington Street
P.O. Box 1351
New London, CT 06320
rmonaco.c-1@snet.net

James T. Murphy, Esq.
Hanson Curran LLP
146 Westminster Street
Providence, RI 02903
jtm@hansoncurran.com
Triton Realty Limited Partner
Triton Realty, Inc., Raymond

Mark T. Nugent, Esq.
Morrison, Mahoney & Miller
One Providence Washington
6th Floor
Providence, RI 02903
mnugent@morrisonmahoney.com
High Tech Special Effects, Ir

Mark K. Ostrowski, Esq.
Shipman & Goodwin, LLP
One American Row
Hartford, CT 06103-2819
mostrowski@goodwin.com

Charles N. Redihan, Esq.
Kiernan, Plunkett & Redihan
91 Friendship Street
Providence, RI 02903
credihan@korlaw.com

James J. Restivo, Esq.
Reed Smith LLP
435 Sixth Avenue
Pittsburg, PA 15219
jrestivo@reedsmith.com

James A. Ruggieri, Esq.
Higgins, Cavanagh & Cooney
123 Dyer Street
Providence, RI 02903
jruggieri@hcc-law.com
General Foam Corp., GFC F
Foamex, L.P., Foamex Intern
FXMI, Inc., PMC, Inc., PMC C

Ronald J. Resmini, Esq.
Law Offices of Ronald J. Res
155 South Main Street
Providence, RI 02903
resmini@vahoo.com
Plaintiff

Robert I. Reardon, Jr., Esq.
The Reardon Law Firm, P.C.
160 Hempstead Street
New London, CT 06320
reardonlaw@aol.com

Stephen M. Prignano, Esq.
Edwards & Angell, LLP
2800 Financial Plaza
Providence, RI 02903
sprignano@edwardsangell.com
WHJY-FM, Clear Channel
Broadcasting, Inc., Home Depot
U.S.A., Inc.

Michael A. St. Pierre, Esq.
Revens, Revens & St. Pierre
946 Centerville Road
Warwick, RI 02886
mikesp@rrsplew.com

Ann M. Songer, Esq.
Shook, Hardy & Bacon, LLP
One Kansas City Place
1200 Main Street
Kansas City, MO 64105-2118
asonger@shb.com

Georgia Sullivan, Esq.
Mathis & Associates
55 Farmington Avenue
Suite 500
Hartford, CT 06105
Georgia.Sullivan@thefairford.com

Randall L. Souza, Esq.
Nixon Peabody, LLP
One Citizens Plaza, Suite 700
Providence, RI 02903
rsouza@nixonpeabody.com

Scott J. Tucker, Esq.
Tucker, Helfetz & Slatzman
Three School Street
Boston, MA 02108
stucker@the-law.com

Susan S. Wettle, Esq.
Frost Brown Todd, LLC
400 West Market Street, 32nd Floor
Louisville, KY 40202-3383
swettle@fbtlaw.com

Max Wistow, Esq.
Wistow & Baryllick Inc.
61 Waybosset Street
Providence, RI 02903
mwistow@wistbar.com
Plaintiff

George E. Wolf, III, Esq.
Shook, Hardy & Bacon, LLP
One Kansas City Place
1200 Main Street
Kansas City, MO 64105-2118
GWolf@shb.com